APPEAL NO. 020593
FILED APRIL 26, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 19, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and had disability from that injury from _____, through January 7, 2002. There was no issue brought forward concerning whether an adjustment should be made to post-injury earnings due to a bona fide offer of employment (BFOE).

The appellant (carrier) has appealed; much of the disability argument has to do with its contention that the claimant was offered light-duty work but refused. There is no response from the claimant.

DECISION

We affirm the hearing officer's decision.

The claimant was injured as he drove a car for a car rental company, when another driver collided with the vehicle he was driving. Section 408.103(e) provides that if an employee is offered a BFOE that the employee is reasonably capable of performing, then weekly earnings after the injury shall include the weekly wage for the position offered. Unfortunately for the carrier's position and most of the evidence it presented, whether the claimant was tendered a BFOE was not articulated or brought forward as an issue. A BFOE and disability are, in fact, two different issues as stated in Texas Workers' Compensation Commission Appeal No. 952098, decided January 26, 1996. *See also* Texas Workers' Compensation Commission Appeal No. 94905, decided August 26, 1994.

Essentially, the carrier quarrels with the manner in which the hearing officer gave weight and credibility to the evidence. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the

evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE I
AUSTIN, TEXAS 78701.

Susan M. Kelley
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Philip F. O'Neill
Appeals Judge